IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.815 OF 2005
WITH
CIVIL APPLICATION NO. 2080 OF 2005

Irfan Hussain Shaban Ali Rizvi. ..Appellant.

V/s.

The Municipal Corpn. of Gr.Mumbai. ..Respondent.

Mr. R.A.Thorat for appellant.

Mr.Xavier for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 12, 2006.

P.C. :

1. Heard counsel for the parties.

2. Perused the relevant evidence which is placed before me in the form of additional paper book. According to Mr.Thorat, the structure in question is in existence prior to datum line i.e. year 1962. He submits that the above position is fortified from the document which has been proved in evidence under Exh. 8 being Assessment Bill. It mentions that the House and shop of Mrs. Manjula R. Shah is shown as part of building known as "Shirin Manzil". It is therefore, submitted that the structure was protected structure and that this evidence has not been

challenged by the defendants. It is then contended that the lower court has brushed aside that document on the specious reasoning that Assessment Bill cannot be said to be in respect of disputed shop.

3. The argument seems to be attractive, but is without any substance. It clearly overlooks that specific case made out by the corporation in the show-cause notice, which has been reiterated in the evidence of the defendant's witness. The corporation's case is that the suit structure is located between the lane(House galli) of Gool Mansion and Shirin Manzil. In other words, specific case of the corporation is that the suit structure is erected between the lane of two buildings and cannot be said to be the part of main building as is sought to be canvassed relying on the Assessment Bill Exh. 8. This statement is made in paragraph 2 of examination-in-chief of Mr.Tushar Shirodkar examined on behalf of the Corporation. There is absolutely no cross-examination on this aspect. In other words, the corporation has established on record that suit structure is located between the lane of Gool Mansion and Shirin Manzil and does not form part of either of the building. Assessment bill pertains to Shirin Manzil. Exh. 8 is therefore of no avail to the

appellant. The appellant has failed to produce any document on record to show that the suit structure was erected after taking prior permission as was required.

4. As mentioned earlier, the Assessment Bill does not pertain to suit structure, as is rightly observed by the trial court. It is possible to say that the reasons recorded by the trial court is not so articulated, but the view taken by me is the substance of the finding reached by the trial court. As no other evidence is relied to establish the fact that the suit structure was erected prior to datum line before this court, I see no reason to depart from the final conclusion reached by the trial court in dismissing the suit. Hence this appeal with civil application should fail. The same is dismissed.

5. At this stage, Mr.Thorat prays for time. But he is not certain whether the appellant would like to avail of that time to move Supreme Court by way of appeal or to vacate the premises. Mr.Thorat submits that he has no instructions from the appellant in this behalf. If it is so, question of granting time does not arise. That prayer is rejected.